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UNITED STATES DISTRICT COURT  
DISTRICT CV-S-02-1218-LDG-RJJ

IRWIN KISHNER, JERRY ENGEL and  
BANK OF AMERICA N.A., as Co-Trustees )  
of the HERMAN KISHNER TRUST, and )  
MARYLAND SQUARE SHOPPING )  
CENTER LIMITED LIABILITY )  
COMPANY, a Nevada limited liability )  
company, )

Plaintiffs,

vs.

AL PHILLIPS THE CLEANER, INC., a )  
Nevada corporation, MELVIN SHAPIRO and )  
PHILIP SHAPIRO, individually and doing )  
business individually and/or as a general )  
partner of "Al Phillips The Cleaner" or "Al )  
Phillips The Cleaner, Inc.," SHAPIRO BROS. )  
INVESTMENT CORP., a dissolved Nevada )  
corporation, DCI USA, INC., a Nevada )  
corporation, )

Defendants.

**COMPLAINT FOR: (1) COST  
RECOVERY PURSUANT TO  
SECTION 107 OF THE  
COMPREHENSIVE  
ENVIRONMENTAL RESPONSE,  
COMPENSATION AND LIABILITY  
ACT, 42 U.S.C. SECTION 9601 *et seq.*  
("CERCLA"); (2) CONTRIBUTION  
UNDER SECTION 113 OF CERCLA;  
(3) DECLARATORY RELIEF UNDER  
CERCLA; (4) BREACH OF  
CONTRACT AND INDEMNITY; (5)  
NEGLIGENCE; (6) PRIVATE  
NUISANCE; (7) TRESPASS; (8)  
UNJUST ENRICHMENT; (9)  
EQUITABLE INDEMNITY; AND (10)  
DECLARATORY RELIEF**

**JURISDICTION**

1. This Court has jurisdiction of the subject matter of this action pursuant to Sections 107 and 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9607 and 9613(b) and 28 U.S.C. Section 1331, with respect to

1 Plaintiffs' claims under CERCLA. This Court also has supplemental jurisdiction with respect to  
2 Plaintiffs' state common law claims pursuant to 28 U.S.C. Section 1367.

3 2. Venue in this Court is proper pursuant to Section 113(b) of CERCLA, 42 U.S.C.  
4 Section 9613(b) and 28 U.S.C. Section 1391(b), because the real property that is the subject of this  
5 action is located within this district.

### 6 PARTIES

7 3. Plaintiffs Irwin Kishner, Jerry Engel and Bank of America N.A. are the duly  
8 appointed and acting co-trustees of the Herman Kishner Trust, which was created by a declaration  
9 of trust dated October 17, 1969 by Herman Kishner, as trustor (the "Herman Kishner Trust").

10 4. Plaintiff Maryland Square Shopping Center Limited Liability Company ("MSSC")  
11 is a limited liability company organized and existing under the laws of the State of Nevada.

12 5. Plaintiffs and their predecessors in interest each at certain times owned that certain  
13 real property commonly known as 3651 to 3681 South Maryland Parkway, Las Vegas, Nevada on  
14 which a shopping center is located (the "Maryland Square Property").

15 6. Plaintiffs are informed and believe, and on that basis allege, that Defendants  
16 MELVIN SHAPIRO and PHILIP SHAPIRO each is an individual who resides in the State of  
17 Nevada and who, at certain times relevant to this action, conducted business individually and/or  
18 as a general partnership under the fictitious names "Al Phillips The Cleaner" and/or "Al Phillips  
19 The Cleaner, Inc."

20 7. Defendant AL PHILLIPS THE CLEANER, INC. ("APTC") is a corporation which  
21 is incorporated and exists under the laws of the State of Nevada.

22 8. Defendant SHAPIRO BROS. INVESTMENT CORP. ("SBIC") is a corporation  
23 which was formed under the laws of the State of Nevada in or about 1972 and which was dissolved  
24 in 1984. Plaintiffs are informed and believe, and on that basis allege, that SBIC conducted  
25 business under the fictitious names "Al Phillips The Cleaner" and/or "Al Phillips The Cleaner, Inc."  
26 at certain times relevant to this action and that Defendants APTC, Melvin Shapiro and/or Philip  
27 Shapiro each assumed or is otherwise the successor to and liable for the obligations and liabilities  
28 of SBIC.

1           9. Defendant DCIUSA, INC. ("DCI") is a corporation which is incorporated and exists  
2 under the laws of the State of Nevada and which is the successor by name change and merger to  
3 Johnson Group, Inc., a corporation which was incorporated under the laws of the State of Ohio.

4           10. Defendants APTC, Melvin Shapiro, Philip Shapiro, SBIC, are sometimes referred  
5 to collectively below as the "APTC Defendants."

6           11. Defendants Melvin Shapiro, Philip Shapiro and DCI are sometimes referred to as  
7 the "Guarantor Defendants."

8                           **LEASE AND OCCUPANCY OF THE APTC PREMISES**

9           12. Since approximately 1969, the APTC Defendants or their predecessors have  
10 occupied certain premises located within the Maryland Square Property at which a dry cleaning  
11 business has been operated (the "APTC Premises").

12           13. In or about April 1968, a lease for the APTC Premises was entered into between  
13 Herman Kishner, dba Maryland Square Shopping Center, as lessor and as predecessor to the  
14 Plaintiffs, and "Al Phillips The Cleaner, Inc.," as lessee, and was modified by the terms of an  
15 addendum dated February 27, 1969 (the "1968 Lease"). The 1968 Lease, as extended by the lessee,  
16 continued in effect through 1981. Plaintiffs are informed and believe, and on that basis allege, that  
17 Defendants Melvin Shapiro, Richard Shapiro and/or SBIC, leased and occupied the APTC  
18 Premises during the term of the 1968 Lease, either as lessees or assignees under the 1968 Lease or  
19 in some other capacity.

20           14. Under the 1968 Lease, and in particular Articles VIII and XXI of such Lease, the  
21 lessee was required: (a) to comply with applicable city, state and federal laws and other  
22 requirements in occupying the APTC Premises; and (b) to indemnify and hold the lessor harmless  
23 with respect to all claims arising from any act, omission or negligence on the part of lessee or its  
24 agents or arising from any accident, injury or damage caused to any person or property and from  
25 any costs, expenses and liabilities incurred in connection with any claims. The 1968 Lease  
26 provides in Article XXX for the recover of reasonable attorney's fees and expenses in an action to  
27 enforce its terms.  
28

1           15. In November 1982, a second lease for the APTC Premises, entitled Indenture of  
2 Lease, was entered into by the Herman Kishner Trust, as lessee, and SBIC, doing business as "Al  
3 Phillips The Cleaner," as lessee (the "1982 Lease"). In or about August 1984, SBIC assigned its  
4 rights and obligations under the 1968 Lease to APTC. As part of such assignment, Johnson Group,  
5 Inc. (to which Defendant DCI USA, INC. is the successor by merger and name change), Melvin  
6 Shapiro and Richard Shapiro each guaranteed APTC's payment and performance of all obligations  
7 contained in the 1982 Lease. The term of the 1982 Lease, which was for ten years ending on  
8 December 31, 1993, was extended pursuant to the terms of the 1982 Lease for an additional ten  
9 years, or until December 31, 2003.

10           16. Pursuant to the terms of the 1982 Lease, and in particular Paragraphs 3, 16 and 31  
11 of such Lease, the lessee is required: (a) to comply with applicable city, state and federal laws and  
12 other requirements in relation to the 1982 Lease and the lessee's occupancy of the APTC Premises;  
13 and (b) to indemnify and hold the lessor harmless with respect to certain demands and expenses  
14 (including attorney's fees) arising out of the lessee's negligence or other fault or omission or by  
15 reason of the lessee's violations of applicable laws, ordinances and regulations. The 1982 Lease  
16 provides, in Paragraph 12, that the Court may award reasonable attorney's fees and costs to the  
17 party prevailing in enforcing any obligation of the other party under the 1982 Lease or in any  
18 litigation connected with the 1982 Lease.

19           17. Plaintiffs have been required to engage counsel to bring this action and have  
20 incurred and are continuing to incur attorney's fees and costs.

21           18. Plaintiff Herman Kishner Trust is the successor to the rights of Herman Kishner as  
22 lessor under the 1968 Lease and with respect to the Maryland Square Property. Plaintiff MSSC is  
23 the successor by assignment to the rights of the Herman Kishner Trust, as lessor under the 1982  
24 Lease, and to its rights with respect to the 1968 Lease and the Maryland Square Property.

#### 25           **PLAINTIFFS' INVESTIGATION OF THE MARYLAND SQUARE PROPERTY**

26           19. Plaintiffs have conducted an investigation of the Maryland Square Property (the  
27 "Investigation") at the direction of the Nevada Division of Environmental Protection (the  
28

1 "Agency"). Plaintiffs have been required consultants to conduct the Investigation and to date have  
2 incurred substantial sums in connection with the Investigation.

3 20. The Investigation has disclosed the presence of perchloroethylene ("PCE"),  
4 trichloroethylene ("TCE") and other substances in the soil and groundwater at the Maryland Square  
5 Property. It has further detected a plume of groundwater containing, among other things, PCE and  
6 TCE, beneath the Maryland Square Property and adjoining properties.

7 21. Plaintiffs are informed and believe, and on that basis allege, that as part of dry  
8 cleaning and other operations at the APTC Premises, the APTC Defendants used PCE and other  
9 chemicals (the "Dry Cleaning Chemicals"). The chemicals detected in the soil and groundwater  
10 as part of the investigation include the Dry Cleaning Chemicals or their breakdown products.  
11 Plaintiffs therefore are informed and believe, and on that basis allege, that releases (as that term is  
12 defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22)) of Dry Cleaning Chemicals  
13 have occurred and are continuing to occur at the APTC Premises and that such releases have  
14 impacted the soil and groundwater beneath the Maryland Square Property and adjoining properties.

15 22. Plaintiffs have incurred costs and other expenses, including, but not limited to, costs  
16 of response within the meaning of Sections 101(23) to (25) of CERCLA, 42 U.S.C. Sections  
17 9601(23) and (25), in connection with the Investigation and will incur additional costs of response  
18 in the future.

19 23. Plaintiffs made demand on certain of the APTC Defendants and the Guarantor  
20 Defendants that such Defendants assume liability and responsibility for the Investigation and any  
21 remediation required as a result of the Investigation, but such Defendants, in response to such  
22 demands, have failed to assume such liability and responsibility to Plaintiffs.

23 24. On or about March 15, 2002, the Clark County School District acquired the  
24 Maryland Square Property from MSSC. In connection with such transfer, MSSC assigned its  
25 interest in the 1982 Lease to the Clark County School District, but retained its rights and claims  
26 against APTC with respect to the claims asserted under such Lease in this Complaint.

27 ...

28 ...

**FIRST CLAIM FOR RELIEF**

(For Cost Recovery Under Section 107 of CERCLA Against the APTC Defendants)

25. Plaintiffs incorporate by reference Paragraphs 1 to 24 of this Complaint as though fully set forth herein.

26. The Dry Cleaning Chemicals are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

27. The portion of the APTC Premises at which the releases and threatened releases described in this Complaint occurred (the "Site") constitutes a "facility" within the meaning of Sections 101(22) and 101(9) of CERCLA, 42 U.S.C. Sections 9601(22) and 9601(9).

28. Each of the APTC Defendants is a "person" as such term is defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

29. Each of the APTC Defendants is a liable party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), with respect to the APTC Premises.

30. Plaintiffs are informed and believe, and based thereon allege, that releases and threatened releases of hazardous substances into the environment within the meaning of Sections 101(14), 101(22) and 107(a) of CERCLA, 42 U.S.C. Sections 9601(14) and (22) and Section 9607(a), have occurred at and from the Site.

31. As a result of such releases, Plaintiffs have incurred costs of response within the meaning of Section 101(23) to (25) of CERCLA, 42 U.S.C. Sections 9601(23) and (25).

32. Plaintiffs are not liable parties with respect to the Site within the meaning of Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

**SECOND CLAIM FOR RELIEF**

(For Contribution Under Section 113(f) of CERCLA Against the APTC Defendants)

33. Plaintiffs incorporate by reference Paragraphs 1 to 24 and 26 to 32 of this Complaint as though fully set forth herein.

34. If they are determined to be responsible parties under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a) (which Plaintiffs dispute), Plaintiffs are entitled to contribution from the APTC Defendants pursuant to Section 113(f) of CERCLA, 42 U.S.C. Section 9613, for any



1 costs of response which Plaintiffs have incurred with respect to the Site. In addition, the equitable  
 2 factors which govern the allocation of liability under Section 113 of CERCLA, 42 U.S.C. Section  
 3 9613, require that the APTC Defendants be held responsible for all costs of response incurred by  
 4 Plaintiffs.

### 5 **THIRD CLAIM FOR RELIEF**

6 (For Declaratory Relief Under CERCLA Against the APTC Defendants)

7 35. Plaintiffs incorporate by reference Paragraphs 1 to 24, 26 to 32 and 34 of this  
 8 Complaint as though fully set forth herein.

9 36. An actual controversy and dispute exists between Plaintiffs, on the one hand, and  
 10 the APTC Defendants, on the other hand, as to whether: (a) Plaintiffs are entitled pursuant to  
 11 Section 107 of CERCLA, 42 U.S.C. Section 9607, to recover from the APTC Defendants any costs  
 12 of response that Plaintiffs have incurred and/or may in the future incur as a result of releases or  
 13 threatened releases of hazardous substances at the Site, and (b) alternatively, whether Plaintiffs are  
 14 entitled to contribution from the APTC Defendants under Section 113(f) of CERCLA, 42 U.S.C.  
 15 Section 9613(f), for costs of response that they have incurred and/or may in the future incur as a  
 16 result of releases or threatened releases of hazardous substances at the Site. Plaintiffs are informed  
 17 and believe, and on that basis allege, that each of the APTC Defendants disputes and denies that  
 18 Plaintiffs are entitled to any recovery under CERCLA.

### 19 **FOURTH CLAIM FOR RELIEF**

20 (For Breach of the 1968 Lease Against the APTC Defendants)

21 37. Plaintiffs incorporate by reference Paragraphs 1 to 24 of this Complaint as though  
 22 fully set forth herein.

23 38. Plaintiffs are informed and believe, and on that basis allege, that during the term of  
 24 the 1968 Lease, releases of Dry Cleaning Chemicals have occurred at the APTC Premises, in  
 25 violation of applicable laws and requirements and in breach by the APTC Defendants of the terms  
 26 of such Lease. The APTC Defendants have further breached the 1968 Lease by failing and refusing  
 27 to indemnify and hold harmless Plaintiffs with respect to the Investigation and the costs of response  
 28 which they have incurred and will in the future incur.

1           39. As a result of such breaches, Plaintiffs have been damaged and are continuing to  
2 suffer damage in an amount according to proof at time of trial.

3                                   **FIFTH CLAIM FOR RELIEF**

4                   (For Indemnity Under the 1968 Lease Against the APTC Defendants)

5           40. Plaintiffs incorporate by reference Paragraphs 1 to 24, 38 and 39 of this Complaint  
6 as though fully set forth herein.

7           41. Under the terms of the 1968 Lease, the lessee is obligated to indemnify the lessor  
8 with respect to the Investigation and for any costs and expenses (including attorney's fees) that it  
9 has or will incur as a result of releases of Dry Cleaning Chemicals at the APTC Premises and any  
10 soil or groundwater contamination which has occurred or may occur as a result.

11                                   **SIXTH CLAIM FOR RELIEF**

12                   (For Breach of the 1982 Lease Against the APTC Defendants)

13           42. Plaintiffs incorporate by reference Paragraphs 1 to 24 of this Complaint as though  
14 fully set forth herein.

15           43. Plaintiffs are informed and believe, and on that basis allege, that during the term of  
16 the 1982 Lease, releases of Dry Cleaning Chemicals have occurred at the APTC Premises, in  
17 violation of applicable laws and requirements and in breach by the APTC Defendants of the terms  
18 of such Lease. The APTC Defendants have further breached the 1982 Lease by failing and refusing  
19 to indemnify and hold harmless Plaintiffs with respect to the Investigation and the costs of response  
20 they have incurred and will in the future incur.

21           44. As a result of such breaches, Plaintiffs have been damaged and are continuing to  
22 suffer damage in an amount according to proof at time of trial.

23                                   **SEVENTH CLAIM FOR RELIEF**

24                   (For Indemnity Under the 1982 Lease Against the APTC Defendants)

25           45. Plaintiffs incorporate by reference Paragraphs 1 to 24, 43 and 44 of this Complaint  
26 as though fully set forth herein.

27           46. Under the terms of the 1982 Lease, the lessee is obligated to indemnify Plaintiffs  
28 with respect to the Investigation and for any costs and expenses (including attorney's fees) that it



has or will incur as a result of releases of Dry Cleaning Chemicals at the APTC Premises and any soil or groundwater contamination which has occurred or may occur as a result.

### **EIGHTH CLAIM FOR RELIEF**

(For Breach of Guaranty Against the Guarantor Defendants)

47. Plaintiffs incorporate by reference Paragraphs 1 to 24, 43, 44 and 46 of this Complaint as though fully set forth herein.

48. In connection with the assignment of the 1982 Lease to APTC in August 1984, Melvin Shapiro, Philip Shapiro and Johnson Group, Inc. each, jointly and severally, unconditionally guaranteed performance by APTC of "each and every one of the obligations of tenant under the lease herein assigned . . . as the same shall become due" and with or without prior demand or notice (the "Guaranty").

49. The Guarantor Defendants are obligated, pursuant to the terms of the Guaranty, to satisfy and perform each of the obligations of APTC under the terms of the 1982 Lease. Plaintiffs have made demand on Guarantor Defendants that they perform such obligations, but they have failed to date to do so. Plaintiffs are informed and believe, and on that basis allege, that the Guarantor Defendants dispute and deny that they are liable to Plaintiffs under the terms of the Guaranty.

### **NINTH CLAIM FOR RELIEF**

(For Negligence Against the APTC Defendants)

50. Plaintiffs incorporate by reference Paragraphs 1 to 24 of this Complaint as though fully set forth herein.

51. The APTC Defendants each owed a duty to Plaintiffs, as owners of the APTC Premises and of the Maryland Square Property, to use due care in the operation of the dry cleaning business at the APTC Premises and not to conduct such business in a manner that would result in releases of Dry Cleaning Chemicals or the contamination of soil or groundwater beneath the APTC Premises on the Maryland Square Property and/or adjoining properties.

52. The APTC Defendants each breached and violated such Defendant's duty of due care to Plaintiffs. As a result of such breach, Plaintiffs have suffered damages, in an amount

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1 according to proof at time of trial. The APTC Defendants' breach was the actual and proximate  
2 cause of damages suffered by Plaintiffs.

### 3 TENTH CLAIM FOR RELIEF

4 (For Private Nuisance Against the APTC Defendants)

5 53. Plaintiffs incorporate by reference Paragraphs 1 to 24 of this Complaint as though  
6 fully set forth herein.

7 54. Plaintiffs are informed and believe, and on that basis allege, that the APTC  
8 Defendants each allowed Dry Cleaning Chemicals to be released into the environment at the APTC  
9 Premises and that such releases caused contamination of soil and groundwater beneath the APTC  
10 Premises, the Maryland Square Property and/or adjoining properties.

11 55. By allowing Dry Cleaning Chemicals to be released at the APTC Premises and  
12 migrate into the soil and groundwater beneath the APTC Premises and the Maryland Square  
13 Property, the APTC Defendants each interfered with Plaintiffs' use and comfortable enjoyment of  
14 the APTC Premises and of the Maryland Square Property and created conditions that are offensive  
15 to the senses, or an obstruction to the free use and enjoyment of the Maryland Square Property.

16 56. The presence of hazardous substances at and beneath the APTC Premises and the  
17 Maryland Square Property constitutes a "nuisance" within the meaning of Section 40.140 of the  
18 Nevada Revised Code, in that such hazardous substances have interfered with Plaintiffs' free use  
19 and comfortable enjoyment of the Maryland Square Property.

20 57. At all relevant times, the APTC Defendants each had a duty not to permit or allow  
21 a nuisance at the APTC Premises. The APTC Defendants each breached that duty by allowing  
22 hazardous substances to be released at and migrate from the APTC Premises and by failing to  
23 remediate and remove such hazardous substances from soil and groundwater at the Maryland  
24 Square Property (including the APTC Premises) and adjoining properties.

25 58. As an actual and proximate result, Plaintiffs have been damaged in an amount  
26 according to proof at trial and will continue to suffer additional injury damages until such releases  
27 are remediated.  
28

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**ELEVENTH CLAIM FOR RELIEF**

(For Trespass Against the APTC Defendants)

59. Plaintiffs incorporate by reference Paragraphs 1 to 24 of this Complaint as though fully set forth herein.

60. The release and entry of hazardous substances into the soil and groundwater beneath the APTC Premises and the Maryland Square Property, without the consent, authorization or approval of Plaintiffs, constitutes a trespass and has interfered with the possession, use and enjoyment by Plaintiffs of the APTC Premises and the Maryland Square Property. Plaintiffs have incurred and in the future will incur costs to abate such trespass.

61. At all relevant times, the APTC Defendants each had a duty not to permit or allow such trespass. The APTC Defendants each was aware of the trespass but failed and refused to take action to prevent or abate it.

62. As an actual and proximate result, Plaintiffs have been damaged in an amount to be proven at trial and will continue to suffer additional damages and injury until such releases are remediated.

**TWELFTH CLAIM FOR RELIEF**

(For Unjust Enrichment Against All Defendants)

63. Plaintiffs incorporate by reference Paragraphs 1 to 24 as though fully set forth herein.

64. By undertaking the Investigation, Plaintiffs have taken actions that are the obligation of Defendants, either by contract, statute, or common law, and in doing so, have conferred and are continuing to confer a benefit on Defendants. The Investigation was required as a result of the actions and activities of Defendants at or in connection with the APTC Premises and the costs incurred in the Investigation therefore should, in equity, be borne by Defendants, and not by Plaintiffs.

65. Defendants have each been unjustly enriched as a result of Plaintiffs' actions, and Plaintiffs are entitled to recover from Defendants to the extent that Defendants have been so unjustly enriched.

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**THIRTEENTH CLAIM FOR RELIEF**

(For Equitable Indemnity Against the APTC Defendants)

66. Plaintiffs incorporate by reference Paragraphs 1 to 24 as though fully set forth herein.

67. Plaintiffs are entitled to equitable indemnity from the APTC Defendants for all costs and expenses incurred by them to investigate and remediate releases of Dry Cleaning Chemicals at or from the APTC Premises and for all such costs and expenses that they may incur in the future.

**FOURTEENTH CLAIM FOR RELIEF**

(For Declaratory Relief Against All Defendants)

68. Plaintiffs incorporate by reference Paragraphs 1 to 24, 38, 39, 41, 43, 44, 46, 48, 49, 51, 52, 54 to 58, 60 to 62, 64 and 65 as though fully set forth herein.

69. An actual controversy and dispute exist between Plaintiffs, on the one hand, and Defendants, on the other hand, with respect to Defendants' respective liability to Plaintiffs under the terms of the 1968 Lease, the 1982 Lease and/or the Guaranty with respect to responsibility for releases of Dry Cleaning Chemicals at and from the APTC Premises, the Investigation and costs and expenses (including attorney's fees and costs) which Plaintiffs has incurred or may incur on account of such releases. Plaintiffs contend, as set forth in this Complaint, that Defendants are liable and responsible for such releases and are obligated to reimburse them for costs incurred in the Investigation and to undertake responsibility and assume liability (including liability to third parties) for and arising out of such releases. Plaintiffs are informed and believe, and on that basis allege, that each of the Defendants disputes and denies Plaintiffs' contentions, as set forth in this Complaint, and also disputes and denies that Plaintiffs are entitled to any recovery or relief from him or it.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. On the First Claim for Relief, for recovery from the APTC Defendants of all costs of response incurred by Plaintiffs with respect to the Site pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607;

2. On the Second Claim for Relief, for contribution from the APTC Defendants of costs of response incurred by Plaintiffs with respect to the Site under Section 113(f) of CERCLA, 42 U.S.C. Section 9613(f);

3. On the Third Claim for Relief, for declaratory relief in accordance with Plaintiffs' contentions and providing that the APTC Defendant are obligated to pay any costs of response with respect to the Site which Plaintiffs may incur in the future;

4. On the Fourth Claim for Relief, for damages from the APTC Defendants according to proof and pursuant to the terms of the 1968 Lease and for recovery of reasonable attorney's fees and costs pursuant to the terms of the 1968 Lease;

5. On the Fifth Claim for Relief, for a judgment directing the APTC Defendants to indemnify and hold harmless Plaintiffs in accordance with the terms of the 1968 Lease and for recovery of reasonable attorney's fees and costs pursuant to the terms of the 1968 Lease;

6. On the Sixth Claim for Relief, for damages from the APTC Defendants according to proof and pursuant to the terms of the 1982 Lease and for recovery of reasonable attorney's fees and costs pursuant to the terms of the 1982 Lease;

7. On the Seventh Claim for Relief, for a judgment directing the APTC Defendants to indemnify Plaintiffs in accordance with the terms of the 1982 Lease and for recovery of reasonable attorney's fees and costs pursuant to the terms of the 1982 Lease;

8. On the Eighth Claim for Relief, for damages from the Guarantor Defendants for breach of the Guaranty in any amount according to proof and for recovery of reasonable attorney's fees and costs pursuant to the terms of the Guaranty and the 1982 Lease;

9. On the Ninth to Eleventh Claims for Relief, for damages according to proof against the APTC Defendants and, in addition, on the Ninth and Tenth Claims for Relief, for an order requiring such Defendants to abate a nuisance and, on the Eleventh Claim for Relief for an order requiring such Defendants to abate a trespass;

10. On the Twelfth Claim for Relief, for recovery against Defendants in an amount according to proof, for and on account of the amount by which Defendants have been unjustly enriched;

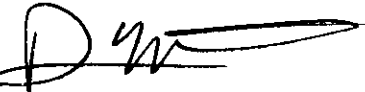
1           11.     On the Thirteenth Claim for Relief, for a judicial declaration that Plaintiffs are  
2     entitled to equitable indemnity from the APTC Defendants for and on account any liability that they  
3     may have with respect to releases of Dry Cleaning Chemicals at or from the APTC Premises;

4           12.     On the Fourteenth Claim for Relief, for declaratory relief in accordance with  
5     Plaintiffs' contentions and for recovery of reasonable attorney's fees and costs pursuant to the  
6     terms of the 1968 Lease and the 1982 Lease; and

7           13.     On all Claims for Relief, for an award of costs and for such other and further relief  
8     as the court deems just and proper.

9  
10    DATED: September 17, 2002

11                   DICKERSON, DICKERSON,  
12                   CONSUL & POCKER

13                   By:   
14

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